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Upcoming at the Regulatory Commissions

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Upcoming at the regulatory commissions...

Public Utilities Commission

Electric utility regulation

The Public Utilities Commission (PUC) continues to face significant rate increase requests from electric utilities. Two forces are driving these rate increases: First, previous commitments to purchase power from independent power producers and qualifying facilities were made at prices that are high relative to current options. Second, the recession is reducing demand for power, and causing the power companies to recover their fixed costs from a smaller base of sales. Rate increases on the order of ten percent per year for the next two years are not implausible. The cases may face a

contentious issue over which set of ratepayers, industrial, commercial or residential, will bear the brunt of these higher costs.

There are several fundamental issues of regulatory policy that have the potential to be re-opened in some degree within these cases. First, current commission policy requires electric utilities to aggressively fund conservation programs. The effect of these expenses upon the level of rates and upon cross-subsidies among customers could become an issue in the context of significant rate increases. Second, past commission policy has essentially prohibited the

use of discount rates to encourage electric use. Given the current excess supplies of power in Maine and New England, utilities may find a renewed interest in discount rates to keep large users on the public grid and perhaps even in "economic development rates." Third, the commission seems to have endorsed the use of "automatic rate adjustment mechanisms" that would permit electric utilities to adjust rates for variations in sales. While these automatic adjustments were intended to offset the negative impacts of commission-mandated conservation programs, they may open up even more complicated issues of incentives in future rate cases. Fourth, the question of appropriate subsidies for low-income consumers remains, although legislative mandate has narrowed the choices for the present.

A national debate continues over the obligations of electric utilities to transmit (or "wheel") power for third parties. This question of the obligation to wheel power grows in importance as non-utility generation of electricity increases. Effective competition among suppliers of electrical power would seem to require some sort of rules that provide generators access to transmission facilities. The issue is almost certain to be resolved largely by national action, so the Maine Public Utilities Commission is likely to have tangential involvement at most. Because the ownership patterns for transmission facilities create varying self-interests, Bangor Hydro-Electric and Maine Public Service would probably favor stronger requirements for transmission access than would Central Maine Power (which is more likely to have transmission facilities affected by wheeling requirements).

Because of the current surplus of power supplies in New England, several issues are unlikely to arise in

the near future. Except perhaps for the Basin Mills hydroelectric project by Bangor Hydro-Electric, contentious new generation projects are not on the horizon. While there is some lingering dissatisfaction with the regulatory framework for independent power purchases, the issue has no immediacy if no new contracts are to be signed. The hiatus in the construction of new generation facilities also reinforces the recently stated "wait-and-see" recommendation by the PUC on "externalities."

Telecommunications regulation

New England Telephone continues to seek some form of "incentive regulation" to replace the current "cost-plus" structure of rate of return regulation. The PUC has committed itself to addressing that issue and evidences some signs of sympathy toward the basic arguments. (See comments by Thomas McBrierty and the interview with Kenneth Gordon in this issue.) Despite this seemingly joint commitment, progress on incentive regulation has been slow to date, in part because the commission's resources are heavily committed to rate increase cases for electric utilities. Moreover, the incentive regulation issue is intertwined with some complicated issues of pricing for toll services in Maine. Consequently, the time-frame for the resolution of the incentive regulation issue is quite uncertain.

The PUC seems headed for fundamental changes in intra-state toll rates and access structures. (Access charges are paid by long distance carriers for access to the local network.) The commission is poised to adopt new access regulations that will make Maine more attractive for long-distance carriers that want to compete to supply intra-state toll service. Agreement is also pending on the outline of

a New England Telephone cost study, which could provide the basis for further commission action toward lower toll rates and lower access charges. The issue of "extended area of service," which determines the size of the local calling area and which has been a persistent regulatory problem, is at least indirectly connected to the question of toll rates. The size of any adjustment to toll rates and the timing of the implementation would determine how basic rates might be affected.

While the overall effect of pricing changes upon New England Telephone's rates would by design be "revenue neutral," the long-run effect of toll and access changes upon independent local telephone companies could be dramatic. The current process of "settlements" that divides toll revenues between New England Telephone and other local phone companies provides independents with relatively generous payments, so independents typically have lower basic rates than New England Telephone and often still earn in excess of the authorized rate of return. Revenues from toll settlements would fall if toll rates fall. Moreover, with competition for intra-state toll calls by AT&T, MCI, and other suppliers, the entire settlements process may have to be replaced with a simpler access charge system. Such fundamental change would likely bring a number of rate cases for independent telephone companies.

The trials of "caller ID" and related services are nearing an end. Although such services have resulted in extremely contentious proceedings in some other states, the various parties in Maine seem to have negotiated an acceptable compromise on the terms under which such service will be permitted. Inasmuch as new (and

difficult) privacy issues are likely to face telecommunications regulation in the future, the ability to find workable compromises on this issue seems a good omen.

Because of the recent FCC decision that permits more cable TV systems to be subject to regulation, there is a good prospect that cable TV regulation will soon be a legislative issue. (See Levy's article in this issue for details.)

Water utility issues

The Maine PUC has jurisdiction over 147 water systems that are operated by public water districts, by municipal water departments, and by a relatively small number of investor-owned water companies. The Safe Drinking Water Act (SDWA) mandates new public health standards for local public water systems. Because the federal government has not allocated any funds to meet these new regulations, both public water districts and investor-owned water utilities must finance new and/or improved drinking water facilities.

The two major concerns about drinking water safety are microbiologic pathogens in surface water (*e.g.*, from lakes) and radon in groundwater (*e.g.*, from drilled wells). The use of chlorine to eliminate microbiologic pathogens from surface water may itself introduce potentially unsafe chlorine compounds into the water. Radon is a major issue because the EPA has identified indoor radon as among the greatest threats to human health. Radon that is carried into the building by water makes a small contribution to radon levels. The Environmental Protection Agency (EPA) has proposed a 300 pico-curie per liter limit for radon. In Maine, ninety-eight percent of the public water systems using groundwater supplies do not meet this threshold.

Although the events that trigger a regulatory process are different for publicly-owned water districts versus investor-owned utilities, the potentially large increases in rates (many could exceed twenty-five percent) are generating and will continue to generate a significant number of cases and a corresponding increase in demands upon PUC resources.

Maine Waste Management Agency

Siting of two special waste landfills, one each in southern Maine and northern Maine, remains the pre-eminent concern for the Maine Waste Management Agency. The two landfills will accept thirty percent incinerator ash, along with other special wastes. The agency has identified five potential sites and hopes to identify the final two sites by March 1, 1992. These five potential sites are in Alton, Biddeford/Arundel, Buxton, Benton and Hampden/Hermon.

The Facility Siting Board, which consists of five members appointed by the governor and approved by the legislature, will make the decision on where to site these two landfills. The board's members include an engineer, a hydrogeologist, a physician, a municipal official and a public representative. The agency has held a series of public meetings to address whether these sites are "suitable" under Department of Environmental Protection criteria. Department of Environmental Protection criteria for siting landfills include visual impact, access to transportation and proximity to where waste is generated. The state is trying to make siting of a landfill more attractive to town residents by using property tax offsets. Some believe the state will have to "pay" towns to accept landfills.

Reaching the state's recycling goals of twenty-five percent recycling by

1992 and fifty percent by 1994 is the second focus of activity for the Maine Waste Management Agency. These goals are not firm mandates; rather municipalities are "encouraged" to attain these recycling goals. The willingness of towns to finance increased recycling under tighter budgets cannot be taken for granted. Recycling generally costs more (often in excess of \$100 per ton) than simply landfilling or incinerating waste (tipping fees are near \$50 per ton), especially when curbside pick-up programs are used. Though drop-off centers are less expensive, these centers collect smaller amounts of recyclables. The agency advocates the benefits of avoiding landfill costs, but clearly better markets for recycled products are necessary to improve the economics of recycling.

Maine state government uses its purchasing power to encourage markets for recycled products. The state has already achieved a recycled content procurement goal for paper and paper products of thirty percent, and has a fifty percent recycled content goal for October 1, 1993. The Maine Waste Management Agency is involved in limited market development within existing manufacturing programs, such as de-inking technology. The agency is involved in market research efforts throughout New England and has been required to develop a market development strategy for the state of Maine. The agency has looked at existing short term markets and long term market potential, with a focus on materials of high market value such as paper and glass.

Land Use Regulation Commission

The Land Use Regulation Commission (LURC) continues in what might be described as an evolutionary process of response to changing circumstances

in the unorganized territories, for which it has broad responsibility. The role of LURC is essentially to provide the land use planning and enforcement functions for the unorganized territories that municipal governments provide in towns and cities.

The comprehensive land use plan, which provides a general blueprint for development in unorganized territories, is being revised. The new land use plan will be subject to adoption by the commission and then approval by the governor. The last revision to the comprehensive land use plan occurred in 1983. The rapid development of lakefront property in the development boom of the 1980s has made the lakes planning component of the comprehensive plan especially important. The commission's planning schedule would have the new plan adopted by July 1993.

Another issue for LURC is major subdivision development in unorganized territories. The commission hopes to develop a strategy to direct growth to appropriate areas and set specific standards for what subdivisions would look like. The commission has specific concerns about how to handle large lot development. (Currently, a forty-acre lot or larger within a quarter mile of a lake must be reviewed by the commission.) A number of public hearings will be held in the spring of 1992 and final adoption could be expected as early as July 1992.

While LURC is best known for its responsibilities in Maine's unorganized territories in northern and eastern Maine, it is also responsible for 3,000 coastal islands. The commission seems to have recognized that its rules do not adequately address the unique needs of coastal islands. The commission is looking for management approaches that address island-specific issues, such as roads, septic systems, and commercial fishing activities.

Board of Environmental Protection

The Board of Environmental Protection (BEP) acts as a quasi-judicial arbiter on a wide range of rulemaking actions, decisions on permit applications, and enforcement actions related to the administration of environmental laws by the Department of Environmental Protection. The public probably perceives the operations of the BEP and LURC as similar, in part because the two agencies share jurisdiction over some projects, such as the rejected ash landfill application for the Penobscot Energy Recovery Corporation. Actually, the BEP has a basically reactive function, and its agenda is heavily determined by the pace of action at the Department of Environmental Protection.

In fact, several proposals have recently been put forth to restructure the relationship between the Board of Environmental Protection and the Department of Environmental Protection (and perhaps also other agencies). Those proposals range from replacing the current part-time board with a full-time board to eliminating the board entirely. The issues of governmental restructuring, the state budget deficit, and various types of dissatisfaction with both the Department of Environmental Protection and the Board of Environmental Protection have become intertwined and have created a very fluid situation in which a wide array of outcomes are politically conceivable.

In this context, it is not surprising that the agenda of the BEP is dominated by several significant permit applications, rather than fundamentally new policy initiatives. Among these permit applications, the Applied Energy Services, Inc. (AES) coal-fired power plant in Bucksport is by far

the largest and most significant. AES has applied for four different permits, including site location, air emissions, wetlands, and waste discharge. The board has decided to consider all four applications at one time. Three of the four permits have been on file since the spring of 1990; the air emission application will not be ready for consideration until May or June of 1992. Not only is this a large project with potentially significant environmental impacts, it also raises the issue of energy export from Maine. (See the comments on energy export by John Flumerfelt and Richard Silkman and by Beth Nagusky in this issue.) Maine's utilities have expressed no interest in the electricity generated by the project, so the power would presumably be sold out-of-state. It seems reasonable to expect controversy over whether "lack of need" is an appropriate environmental criteria on which to deny permits to such a project.

Two energy project proposals by Bangor Hydro-Electric may also become significant cases. Bangor Hydro has proposed to relicense and to add a new power component to its Veazie dam. The proposal would also decommission the power house at the Orono dam and construct a new dam in the Basin Mills area. In total, these actions would add forty-four megawatts of capacity. The future of this "Basin Mills" project is clouded by other regulatory actions, including a very negative decision by the PUC.

Bangor Hydro has also proposed the construction of an additional transmission line through eastern Maine to Canada. Because most of the line would go through unorganized territories, the BEP and LURC would both have jurisdiction. Here again, the initial signs of opposition seem to be tied the perceptions of "lack of need." □

Upcoming conferences related to regulatory issues

ECO/ECO Forum

The College of the Atlantic is sponsoring its third "ECO/ECO Forum," with a tentative date of March 5-6, 1992. The Forum will focus on the process of reviewing recommendations for a state project on comparative risk evaluation and environmental priority setting. For more information regarding the ECO/ECO Forum, please contact Ted Koffman, College of the Atlantic, ECO/ECO Project, Bar Harbor, ME 04609, 207/288-5015.

PURE '92: Public Regulation in the Nineties

The Margaret Chase Smith Center and its Public Regulation and the Environment Project are sponsoring a conference on February 20-21, 1992, on the policy challenges confronting regulated utilities, policymakers, environmentalists and the public. See details inside back cover.

—Prepared by Linda Wood and Ralph Townsend

Recent publications of interest

Abel, Amy. May 1990. *Public Utilities Holding Company Act of 1935: Is This the Time for Reform?* Congressional Research Service Issue Brief IB89052. 9 pp.

Parker, Larry B. March 1991. *PUHCA Reform: Comparison of Provisions in S. 341 and H. R. 1301/S. 570.* Congressional Research Service Report for Congress 91-277 ENR. 13 pp.

The first of these two CRS reports summarizes the issues that have driven the efforts to reform the Public Utilities Holding Company Act. The second compares and contrasts the approaches of the Bush Administration and Senator Johnston to amending the act.

Central Maine Power. September 1991. *Energy Resource Plan.* 73 pp. CMP has recently released this study of the energy needs the company will face through 2010. Its most striking conclusion is that CMP will require no new base-load generating capacity until 2003. The report's conclusions reflect the current surplus of generating capacity in New England.

Kaufman, Alvin. May 1990. *Natural Gas and the Generation of Electricity.* Congressional Research Service Report 90-253 ENR. 36 pp.

In the context of recent interest in bringing more natural gas resources to Maine, this concise report provides a useful analysis of the immediate motivation for greater gas-fired electrical generation capacity and the longer-run uncertainties.

Maine Public Utilities Commission. May 1991. *Environmental and Economic Impacts: A review and analysis of its role in Maine energy policy.* Report to the 115th Maine Legislature Joint Standing Committee on Utilities. 39 pp. plus appendices.

This report, which the legislature directed the PUC to prepare, may well have a double significance. Substantively, the report recommends a cautious approach to "externality adders." It cites a number of conceptual and practical problems with the approach. Philosophically, one can easily read into the report a concern by a majority of the current commission that Maine should be cautious about new "experimental" approaches to public utility regulation. (A dissent to the report was also prepared by then-Commissioner Cheryl Harrington.)

Ottinger, Richard L., David R. Wooley, Nicholas A. Robinson, David R. Hodas, and Susan E. Babb. September 1990. *Environmental Costs of Electricity.* Prepared by Pace University Center for Environmental Legal Studies for the New York State Energy Research and Development Authority and the U. S. Department of Energy. New York: Oceanus Publications. 634 pp.

This recent report attempts to be a comprehensive review of the literature on the costs of environmental pollution from all types of electric generation facilities. □